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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,039	03/04/2002	James Hammer	1342-61338	6479

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EXAMINER

NGUYEN, THUKHANH T

ART UNIT	PAPER NUMBER
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1722

DATE MAILED: 12/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/091,039		HAMMER ET AL.	
	Examiner		Art Unit	
	Thu Khanh T. Nguyen		1722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 and 52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-39 and 52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-39 and 52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 11, 20, 25, 29, 30, and 36 include that the cavity or the mold wall having “substantially constant” cross-section or thickness. However, there is no support in the specification to indicate what the applicants mean by “substantially constant”. It is unclear how much the cross-section of the mold cavity or the thickness of the molding wall could vary and still is substantially constant.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-39 and 52 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over the Japanese reference (JP 2001-191314A).

The JP’314 reference discloses a molding apparatus for forming concrete blocks, comprising mold walls (210) and a plurality of partition walls (230) defining a plurality of mold

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cavities, each cavity has an upper opening and a lower opening for feeding the material into the mold cavity and for removing the blocks from the cavity (Fig. 5a-b), wherein the walls including a concave-convex patterned surface (231) having a plurality of concave parts (232) and a plurality of projections (233) for forming a uniform pattern throughout most of the surface (720) of the concrete blocks; and a plurality of mold inserts (240) extended into the mold cavities.

The JP'314 fails to disclose that the projections are tapered or having pyramidal shape.

Because the molding surface having a concave-convex pattern in order to form a block having texture resembling that of a natural stone (translation copy, TC,[0003]), it's either inherent or it would be obvious to modify the projections to have tapered or pyramidal shape. There is no invention in merely changing the shape or form of an article without changing its function except in a design patent. See Eskimo Pie Corp. v. Levous et al., 3 USPQ 23 and In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

In regard to the orientation of the projections on the mold surface, it would have been obvious to one of ordinary skill in the art to rearrange the projections on the mold surface to form a desired embossing pattern on the block surfaces. It has been held that by merely shifting the position of the parts without changing the operation of the mechanism will not render the claims patentable and the placement of the mechanism is an obvious matter of design choice. In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950); In re Kuhle, 526 F.2d 553, 188 USPQ 7 (CCPA 1975).

In regard to the slope of the side surface of the projections, it would have been obvious to one of ordinary skill in the art to change the slope of the side surfaces depending on the desired shape of the projections. There is no invention in merely changing the shape or form of an

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article without changing its function except in a design patent. See Eskimo Pie Corp. v. Levous et al., 3 USPQ 23 and In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

In regard to the cross section area of the mold cavity or the thickness of the molding wall that are substantially to provide a substantially constant cross section for the forming blocks, it would have been obvious to one of ordinary skill in the art to change the size and the shape of the mold cavity or the mold wall in corresponding with the desired size and shape of the desired molding product. There is no invention in merely changing the shape or form of an article without changing its function except in a design patent. See Eskimo Pie Corp. v. Levous et al., 3 USPQ 23 and In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). In Gardner v. TEC Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

In regard to the masonry blocks that are uncured during the molding process, the JP'314 reference discloses that the block (600) is extracted from the molding box (200) into a conveyor (500) where it's being cured (TC [0033]). Therefore, the forming blocks are uncured or only partially cured during the molding, where most of the curing is done outside the mold after the block has been formed.

In addition, Fladgard et al (5,722,386) is disclosed to illustrate that the forming block device can have different shape or pattern in order to form concrete products having different texture. Fladgard et al disclose a method and apparatus for forming ornamental edges on cement siding workpieces, comprising a shearing blades for cutting the cement block, wherein the

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shearing blades having different ornamental shapes to form different ornamental features on the cement, such as a spaced apart scalloped shape, a sawtooth shape, a semi-hexagonal shape or a truncated semi-circle shape. It would, therefore, be obvious to a skilled artisan to change the pattern of the shaping means in order to form a concrete block having a desired pattern.

Response to Arguments

5. Applicant's arguments filed October 24, 2005 have been fully considered but they are not persuasive. The applicants argued that the JP'314 reference fails to disclose that the cross section of the cavity and the thickness of the mold wall are substantially constant. First of all, the applicants fail to disclose what "substantially constant" mean. The examiner interprets that the size and the shape of the cavity and the mold thickness could still vary to some small degree. Therefore, the JP'314 reference still reads on this limitation. Although, this reference discloses that the cross section of the mold increase to form a gap between the wall and the block, it does so only to reduce the friction between the mold wall and the forming block during the removal of the block from the mold (paragraph 0014).

Sine the blocks are having protrusions on the surface of 2-7mm (paragraph 0021, or 0.079-0.28 inches), the gap only need to be this big so that the block can be removed without any protrusion being scratch off from the wall. The commercial concrete blocks that are selling on the market having a size from 2"-16" in length or width. The size of the gap (0.079"-0.28") to prevent friction as disclosed in the JP'314 reference is very small compared with the size of the blocks (2" – 16"). Therefore, the blocks have substantially constant thickness, and the mold cavity and the wall are substantially constant.

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In regard to the orientation of the projections on the surface of the mold wall, the Applicant repeatedly argued that when the projections in the JP'314 reference are rearranged, it would defeat the purpose of the patent. However, the JP'314 also teaches that the surface of the mold could be changed to form different patterns on the molding blocks (Figures 6-8). Therefore, it would still have been obvious to one of ordinary skill in the art to change the pattern of the mold surface in order to obtain the corresponding texture on the molding blocks.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Khanh T. Nguyen whose telephone number is 571-272-1136. The examiner can normally be reached on Monday- Friday, 6:30-4:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on 571-272-1166. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TN



ROBERT DAVIS
PRIMARY EXAMINER
GROUP 1300/1700

12/22/05